IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2514 OF 2005

Raju Patil & Ors. ... Petitioners

Vs.

Madhavlal P. Pittie ... Respondent

ALONG WITH

WRIT PETITION NO.2515 OF 2005

Shiva Pergalla & Ors. ... Petitioners

Vs.

Madhavlal P. Pittie ... Respondent

ALONG WITH

WRIT PETITION NO.2517 OF 2005

Abdulla Illhak Ali & Ors. ... Petitioners

Vs.

Madhavlal P. Pittie ... Respondent

Mr. Abhay Abhyankar with Mr. Sanjay Jain and Mr. Ashok Jain i/b M/s. A.V. Jain Associates for the petitioners in all petitions.

Ms. Rajni Iyer with Ms. D.A. Chhapgar i/b M/s. D.J. Kamdin & Co. for the respondent, in all petitions.

CORAM: SMT. RANJANA DESAI, J.

DATED: 27TH APRIL, 2005.

P.C.:-

1. The petitioners in all these petitions are obstructionists. Obstructionist Notice Nos.40 of 2001,

21 of 2001 and 22 of 2001 were taken out in Obstructionist Notice No.156 of 1985 in R.A.E. Suit No.192 of 1968 by the respondent in all these petitions viz. Madhavlal N. Pittie. By judgment and order dated 12/6/2002, the notices were made absolute. Appeals were filed challenging the said order being Appeal Nos.552 of 2002, 553 of 2002 and 554 of 2002. By order dated 6/4/2005, the Division Bench of the Small Causes Court dismissed the appeals and, hence, these petitions. Brief facts, which give rise to these petitions may have to be stated.

2. The respondent - Madhavlal N. Pittie filed a suit being R.A.E. Suit No.192 of 1968 against one B.K. Mukerji for possession. The suit was decreed on 17/4/1968. The suit related to Flat No.23, situated on the 2nd floor of the building known as Shivlal Motilal Mansion, Bellaris Road, Mumbai. The said flat has four rooms described as A, B, C and D.

3. The decree holder tried to execute the decree on 26/8/1968. But the said execution was obstructed by one Mr. I.N. Pandit. Obstructionist Notice No.756 of 1968 was taken out by the decree holder. The said notice was dismissed because it was lodged beyond the period of limitation. Thereafter the decree holder filed an application under Order XXI, Rule 22 of the Civil Procedure Code. On 31/1/1985, order was passed on it and on 20/8/1985 warrant of possession was issued. The said

warrant of possession was obstructed by the second set of obstructionists on 9/9/1985. On 9/10/1985, the decree holder took out Obstructionist Notice No.156 of 1985 for removal of obstruction caused by the second set of obstructionists. Out of the second set of obstructionists, obstructionist 1 Abdul Majid Khan claims to be in occupation of Room A. Obstructionist 2 claims to be in occupation of Room B. Obstructionist 3 claims to be in occupation of Room C. Obstructionists 4 and 5 claim to be in occupation of Room D. Admittedly, Obstructionist 3 Savahuddin settled the matter and filed consent terms on 2/8/1985. Thereafter, Obstructionist Notice No.156 of 1985 was continued against Obstructionists 1, 2, 4 and 5 in respect of Rooms A, B and D. Obstructionist Notice No.156 of 1985 was made absolute on 21/8/1998.

4. Obstructionist 2 - Mohamed Salim, who claims to be in occupation of Room B filed Appeal No.509 of 1998, which was dismissed on 20/12/2000. He filed Writ Petition No.479 of 2001 which was rejected on 14/2/2001. However, there was stay of execution of the order till 14/3/2001. One Felix Sequeira claiming to be obstructionist 4 Nina Patel filed Appeal No.2351 of 1998 against order dated 21/8/1988 making Obstructionist Notice No.156 of 1985 absolute. This appeal was in respect of Room No.D. It was rejected on 8/11/1988. Writ Petition No.1212 of 1998 was filed against that order. It was allowed on 9/6/1999. The decree holder filed Civil Revision

Application No.4576 of 1999 for review of the order dated 9/6/1999. This court recalled the order dated 9/6/1999 and the petition was dismissed.

5. Obstructionist 1 - Abdul Majid Khan of the second set of obstructionists claimed rights in respect of Room No.A. Execution proceedings in respect of the said room could not be proceeded with because in Appeal No.509 of 1998 filed by Mohamed Salim of the first set of obstructionists, there was a general stay order. That stay was vacated on 20/12/2000.

6. Application to execute the decree in respect of Room No.A and D was made on 22/2/2001. It was allowed on the same day. On that day, these rooms were found locked. Application to execute the decree in respect of Room No.B was made on 2/4/2001. It was allowed on the same day. On that day, that room was also found locked. Order of breaking open Room Nos.A and D with the police help was taken on 23/2/2001. Order for breaking open Room No.B with the police help was taken on 4/4/2001. Room Nos.A and D were visited on 26/2/2001 and Room No.B was visited on 11/4/2001 to implement the order.

7. Petitioners in Writ Petition No.2514 of 2005 caused obstruction in execution of decree in respect of Room No.B. Petitioners in Writ Petition No.2515 caused obstruction in execution of decree in respect of Room No.D. Petitioners in Writ Petition No.2517 of 2005

caused obstruction in execution of decree in respect of Room No.A. Thereafter, three notices were taken out in Obstructionist Notice No.156 of 1985. Obstructionist Notice Nos.21 and 22 of 2001 were taken out on 5/3/2001. Obstructionist Notice No.40 of 2001 was taken out on 30/4/2001. Common evidence was led. The decree holder examined his constituted attorney. Obstructionists did not examine any witnesses. On 12/6/2002, the Executing Court made the notices absolute. Appeals carried from the said orders were dismissed on 6/4/2005. Hence these writ petitions.

8. I have heard, at some length, Mr. Abhyankar, the learned counsel appearing for the petitioners and Ms. Iyer, the learned counsel appearing for the respondent. Mr. Abhyankar contended that the obstructionist notices were barred by law of limitation and, therefore, the courts below have erred in making them absolute. I find no substance in this submission. It is pertinent to note that Writ Petition No.479 of 2001 was filed by the second set of obstructionists challenging orders making Obstructionist Notice No.156 of 1986 absolute and rejecting the prayer made by the obstructionists for remand of the matter to the trial court for evidence. In that writ petition, a specific point was taken that the execution of the decree in R.A.E. Suit No.192 of 1968 is barred by limitation. This writ petition was rejected on 14/2/2001. It must be presumed therefore that this court considered the submission regarding limitation and

rejected it while dismissing the writ petition.

9. It is also pertinent to note that in the appeal court, the learned counsel for the obstructionists made a statement that he did not desire to press the appeals on any of the grounds based on the facts and merits. He made a categorical statement that he was challenging the common judgment and order only on two grounds viz. the writ of summons has not been properly served and there was no evidence before the trial court to pass the decree in R.A.E. Suit No.192 of 1968. So far as service of writ of summons is concerned, the lower appellate court has properly considered all the relevant facts and come to the conclusion that there are no illegalities in service of writ of summons. I concur with the lower appellate court on that issue. So far as the contention that there was no evidence before the trial court to pass the decree is concerned, the Executing Court cannot go behind the decree and, hence, this contention has rightly been rejected by the lower appellate court.

10. It is also significant to note that the learned counsel for the obstructionists made a statement before the lower appellate court that all the obstructionists are residing in the suit premises from the date of obstruction and they were not residing in the suit premises before obstruction. This statement made by the learned counsel for the petitioners completely exposes the petitioners. There is absolutely no merit in these

petitions and they deserve to be dismissed and are dismissed as such.

11. For further orders regarding stay, place this matter on board on 5/5/2005.

(SMT. RANJANA DESAI, J.)